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| In re Patent No. 6,746,285 | : | |
| Delcourt et al. | : | |
| Issue Date: June 8, 2004 | : | DECISION ON REQUEST FOR |
| Application No. 10/075,090 | : | RECONSIDERATION OF |
| Filed: February 12, 2002 | : | PATENT TERM ADJUSTMENT |
| Attorney Docket No. 0275M-000441 | : | and |
| | : | NOTICE OF INTENT TO |
| | : | ISSUE CERTIFICATE OF |
| | : | CORRECTION |
| | : | |

This is a decision on the "PETITION TO REQUEST RECONSIDERATION OF PATENT TERM ADJUSTMENT CALCULATION PURSUANT TO 37 CFR 1.705," filed June 17, 2004. Patentees request that the patent term adjustment indicated in the patent be corrected from ninety-four (94) to one hundred forty-three (143) days.

The request for reconsideration of the patent term adjustment indicated in the patent is **GRANTED**.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of one hundred forty-three **(143)** days.

On June 8, 2004, the above-identified application matured into U.S. Patent No. 6,746,285. The instant request for reconsideration filed June 17, 2004 was timely filed within 30 days of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment of 94 days. Patentees state that the initial determination of patent term adjustment of 143 days should not have been reduced by 49 days for the submission of a Comments on Statement of Reasons for Allowance, filed after mailing of the notice of allowance.

Patentees' argument is well-taken. By Official Gazette Notice dated June 26, 2001, the Director has advised applicants and patentees that the filing after the mailing of a Notice of Allowance of a response to the examiner's reasons for allowance will not be considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application

and will not result in reduction of a patent term adjustment pursuant to 37 CFR 1.704(c)(10) *Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance*, 1247 OG 111 (June 26, 2001). A review of the application record confirms that the reduction of 49 days was based on the filing after allowance of the "Comments on Statement of Reasons for Allowance" filed April 21, 2004. Thus, it is concluded that the patent term adjustment should not have been reduced by 49 days.

Furthermore, there were no other bases for reduction of the patent term adjustment.

In view thereof, the patent term adjustment indicated on the patent should have been one hundred forty-three **(143)** days.

The \$200.00 fee set forth in 37 CFR 1.18(e) has been charged to Deposit Account No. 02-2550, as authorized. No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. See 35 U.S.C. § 254 and 37 CFR § 1.322. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one hundred forty-three (143) days.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (703) 305-0309.

Karin A. Ferriter
for

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction